

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1105 Susquehanna Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Jason and Mina Jackson, <i>Legal Owners</i>	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2017-0037-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Jason and Mina Jackson, owners of the subject property (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit an existing detached accessory structure (garage) with a height of 19 ft. in lieu of the maximum allowed 15 ft. A site plan was marked as Petitioners’ Exhibit 1.

The owners, assisted by David Billingsley, appeared in support of the petition. The adjacent neighbors, represented by Geoffrey Washington, Esq., opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (DEPS), concerning the Critical Area regulations.

The subject property is approximately 30,000 sq. ft. in size and is zoned DR 3.5. The property was purchased by Petitioners last year, and is improved with a single-family dwelling constructed in 1913. Due to a lack of storage in their home, Petitioners constructed a shed/garage in their rear yard. Petitioners received a code enforcement correction notice for constructing the accessory building without a permit. Upon further investigation it was determined the garage was approximately 19 ft. in height, which exceeds the 15 ft. maximum height set forth at B.C.Z.R.

§400.3.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

In response to a question on cross-examination Mr. Jackson conceded his property is similar in size and shape to many of the other properties in the community. Both the Plat of Long Beach Estates (Ex. 5) and photographs (Ex. 7) reveal the site is rectangular and flat, similar to many of the other lots in the subdivision. Though he did not believe the property itself was unique Petitioner contended the dwelling was unique, in that it does not have a basement or ample closet space, amenities found in adjoining homes. Unfortunately, the presence of absence of a basement does not constitute the requisite uniqueness or peculiarity required by Maryland law.

The site itself does not have any truly inherent characteristics (i.e., size, shape, topography, etc.) that would render it unique under Maryland law. The petitioner must establish the property (not the dwelling erected thereon) is unique or peculiar in a way that is unlike other properties in the neighborhood. In a contested case requiring a rigorous application of the variance standard, the petitioner faces an uphill battle. In fact, I was unable to locate a Maryland appellate court opinion from the last twenty years which upheld the grant of a variance. Under Maryland law, variances should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699.

THEREFORE, IT IS ORDERED, this 30th day of September, **2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore

County Zoning Regulations (“B.C.Z.R.”) to permit an existing detached accessory structure (garage) with a height of 19 ft. in lieu of the maximum allowed 15 ft., be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln